JOHORE REPORT

[ORIGINAL CIVIL JURISDICTION]
MILLS, J.
October 23, 1937.

K. A. R. S. T. CHIDAMBARAM CHETTIAR
v.
RAJA UDENG BIN ABDUL RAHMAN

[BATU PAHAT ORIGINATING SUMMONS No. 49 of 1937]

Practice—application for further prohibitory order—Civil Procedure Code, S. 294 (vii).

When an application is made for a further prohibitory order under section 294 (vii) of the Civil Procedure Code, the application need not be served on the judgment debtor, but if the application is allowed, a copy of the further prohibitory order must be served upon him.

SUMMONS IN CHAMBERS.

Goho for the applicant.

Cur. Ad. Vult.

MILLS, J.—In this summons a judgment-creditor applies for a further prohibitory order under Section 294 (vii) of the Civil Procedure Code.

The question has arisen whether the application should be served on the judgment-debtor.

On a consideration of the sections falling under the heading "Attachment of Property," one finds that attachment is effected in one of 5 ways:

(a) actual seizure: in sections 285 and 290.
(b) a notice: in sections 287, 292 and 293.
(c) a written order: in sections 288 and 289.
(d) an order of the Court: in section 293.
(e) a prohibitory order: in section 294.

It is clear that in cases (a) (b) (c) and (d) no opportunity is given to the judgment-debtor to resist the attachment.

It is clear, further, that the application for a prohibitory order under section 294 (i) is not to be served on the judgment-debtor.

While, as regards an application to extend a prohibitory order under section 294 (v) Section 294 (vi) applies the provisions of Section 294 (ii), from which it is to be concluded that the application need not be served on the judgment-debtor.

My conclusion is that it is the policy of the law to effect the attachment without giving to the judgment-debtor an opportunity to resist it.

But a copy of the prohibitory order under Section 294 (i) and of an extending order under Section 294 (v) is to be served on the judgment-debtor, so that he may have an opportunity of applying that the order may be set aside in a proper case.

Is it the intention of the Legislature to reverse that policy in the case of a further prohibitory order under Section 294 (vii)?

If Section 294 stood alone, I might be put in great doubt owing to the fact that in the case of an extending order under Section 294 (v) express provision is made by Section 294 (vi) and I might feel that I had no option but to apply the rule of construction "Expressio unius est exclusio alterius."

But I deduce the policy of the law by considering all the Sections under heading "Attachment of property" and I feel justified in concluding that it was not the intention of the legislature to reverse that policy in one single instance, namely, where an application is made for a further prohibitory order.

Accordingly I hold that when an application is made for a further prohibitory order under Section 294 (vii), the application need not be served on the judgment-debtor. In the present case I am satisfied that special circumstances justify the issue of a further prohibitory order; accordingly I make a further prohibitory order, and I order that a copy thereof shall be served on the judgment-debtor.

Order accordingly.

Solicitors for the Applicant:—
S. C. Goho & Co.